

APPEAL NO. 022436
FILED NOVEMBER 7, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 3, 2002. The hearing officer determined that the appellant (claimant) did not have disability resulting from the compensable (low back) injury sustained on _____. The claimant appealed on sufficiency of the evidence. The file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

The hearing officer gives a detailed recitation of the medical evidence. In two prior CCH's, heard by another hearing officer, not appealed to the Appeals Panel, the other hearing officer found that the carrier had waived its right to contest compensability, and that the claimant had sustained a compensable injury on _____ (the parties in this case also stipulated to the _____ injury). Disability was not an issue. In the prior CCH the other hearing officer found that the claimant had not sustained a compensable injury on (subsequent injury), and because he did not have a compensable injury the claimant did not have disability from June 29 through September 25, 2001. The transcript of that case is in the record of this case and contained the testimony of how the claimant's inability to obtain and retain employment was due to the (subsequent injury) injury. The claimant is now contending that the inability to work for the period of June 29 through September 25, 2001, was due to the compensable _____, injury rather than the noncompensable "flare up" of (subsequent injury).

The conflicting testimony and the reason for the claimant's unemployment were matters for the hearing officer to resolve. The hearing officer commented that "[h]aving listened to and observed the [c]laimant, he was neither credible nor persuasive." The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION COMPANY
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge